

MORRISON & FOERSTER LLP

ATTORNEYS AT LAW

SAN FRANCISCO
LOS ANGELES
DENVER
PALO ALTO
WALNUT CREEK
SACRAMENTO
CENTURY CITY
ORANGE COUNTY
SAN DIEGO

2000 PENNSYLVANIA AVENUE, NW
WASHINGTON, D.C. 20006-1888
TELEPHONE (202) 887-1500
TELEFACSIMILE (202) 887-0763

DOCKET FILE COPY ORIGINAL

NEW YORK
WASHINGTON, D.C.
NORTHERN VIRGINIA
LONDON
BRUSSELS
HONG KONG
BEIJING
SHANGHAI
SINGAPORE
TOKYO

August 30, 2004

RECEIVED

AUG 30 2004

Writer's Direct Contact

202/887-6931
jrichter@mofo.com

Federal Communications Commission
Office of Secretary

By Messenger

Marlene H. Dortch, Secretary
Federal Communications Commission
Office of the Secretary
c/o Natek, Inc., Inc.
236 Massachusetts Avenue, N.E.
Suite 110
Washington, DC 20002

**Re: WT Docket No. 03-66
Petition for Reconsideration
WBSWP Licensing Corporation
Dismissed Modification Application for KZB30 (File No. 9550910)
Dismissed Waiver Request**

Dear Ms. Dortch:

On behalf of WBSWP Licensing Corporation and its parent company, Sprint Corporation, and pursuant to Sections 1.51, 1.106 and 1.429 of the Commission's rules, please find attached an original and fourteen (14) copies of a Petition for Reconsideration of the Commission's decision on July 29, 2004 to dismiss a modification application (File No. 9550910) and a waiver request, both filed by WBSWP Licensing Corporation. The Commission's decisions to dismiss the modification application and waiver request were contained in Exhibits E and F to the Report and Order released in the following proceeding: *Amendment of Parts 1, 21, 73, 74 and 101 of the Commission's Rules to Facilitate the Provision of Fixed and Mobile Broadband Access, Educational and Other Advanced Services in the 2150-2162 and 2500-2690 MHz Bands*, Report and Order and Further Notice of Proposed Rulemaking, WT Docket No. 03-66, FCC 04-135 (July 29, 2004).

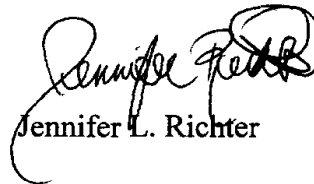
No. of Copies rec'd 0114
List ABOVE

MORRISON & FOERSTER LLP

Marlene H. Dortch, Secretary
August 30, 2004
Page Two

Please date-stamp one enclosed copy of this submission and return it to my attention in the self-addressed, stamped, return envelope. Should any questions arise regarding this filing, please communicate directly with the undersigned. Thank you.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Jennifer Richter", with a large, stylized flourish at the end.

Jennifer L. Richter

RECEIVED

**Federal Communications Commission
Office of Secretary**

)

)

)

)

)

)

;

2

1

ORIGINAL

dc-390053

The Modification Application³ was dismissed by the Commission based upon the erroneous conclusion that it is mutually exclusive with an unspecified Instructional Television Fixed Service ("ITFS") station or application (i.e., "MDS MX with ITFS").⁴ The Modification Application was filed as part of a Marketwide Settlement Agreement ("Marketwide Settlement," attached hereto as Exhibit 1) and is not mutually exclusive with any other previously proposed application or station. To the extent the Commission's notation "MX with ITFS" refers to some form of mutual exclusivity between the Modification Application and the School District's ITFS station, KZB30, there is no issue. The station that is being modified pursuant to the Modification Application is KZB30, and therefore cannot be mutually exclusive. The Modification Application was improperly dismissed and should be reinstated promptly for processing with all other collocation applications that were filed as part of the Marketwide Settlement.⁵

WBSWP believes that the Waiver Request dismissed by the Commission pursuant to Exhibit F of the *Report and Order* is the "Joint Motion for Approval of Settlement and Request for Waiver of Cut-Off Rules," filed with the Commission on May 24, 1995 together with the

³ The Modification Application (File No. 9550910) was filed with the Commission on June 6, 1995 and was accepted for filing by the Commission on October 4, 1995. The Modification Application should be reinstated, processed and granted together with two amendments to the application that were filed on September 14, 1995 (to reduce tower height) and February 6, 1997 (to add a digital emissions designator).

⁴ *Report and Order*, Appendix E, Dismissed Mutually Exclusive ITFS Applications.

⁵ The application file numbers for the other collocation applications that were filed as part of the Marketwide Settlement are: A-group (KZB28), School Board of Palm Beach County, BMPLIF-950524DL (accepted for filing, September 30, 1996); B-group (WHR896), Florida Atlantic University, BMPLIF-950524DF (accepted for filing, September 30, 1996); C-group (WHR901), Florida Atlantic University, BMPLIF-950524DD (accepted for filing, September 30, 1996); D1 & D2, School Board of Palm Beach County, BMPLIF-950524DN (accepted for filing, September 30, 1996); D3 & D4, Florida Atlantic University, BPLIF-920814DA (amended by 19950524DE) (accepted for filing on October 3, 1993); G-group (KZB29), School Board of Palm Beach County, BMPLIF-950524DM (accepted for filing, September 30, 1996).

Marketwide Settlement. This Waiver Request was attached to the Modification Application that was dismissed pursuant to Exhibit E of the *Report and Order*. If this is the Waiver Request to which Exhibit F refers, although it is not clear, the Waiver Request cannot be dismissed because it relates to a number of pending applications that are part of the Marketwide Settlement.⁶ With the exception of the Modification Application and the collocation application for WHR901, all other applications that were filed as part of the Marketwide Settlement remain pending. Thus, the Waiver Request must be reinstated.

Background.

The Marketwide Settlement was entered into by all interested parties in the Boynton Beach – West Palm Beach market (the “Market”) in order to *resolve* mutual exclusivity in the Market.⁷ The parties to the Marketwide Settlement are WBSWP Licensing Corporation, the School District of Palm Beach County (the “School District”), Florida Atlantic University (“FAU”), the parent company of WBSWP (Wireless Broadcasting Systems of West Palm Beach, Inc., also a Sprint subsidiary), and its predecessor in interest People’s Choice TV, Inc. (“PCTV”).

The Marketwide Settlement seeks to resolve mutually exclusive applications for the D-group that were filed by the School District and FAU, and to reorganize and reassign all of the ITFS and Multipoint Distribution Service (“MDS”) spectrum in the Market in order to eliminate multiple competing stations, allow for more efficient instructional service and the launch of

⁶ See *supra* n.5

⁷ The Marketwide Settlement to resolve mutually exclusive applications was filed pursuant to the authority granted by the Commission in *Instructional Television Fixed Service Reconsideration, Memorandum Opinion and Order*, 59 Rad. Reg. 2d 1355, 1381 n.47 (1986).

commercial wireless service.⁸ The School District and FAU, whose competing applications for the D-group form the basis of the Marketwide Settlement, hold virtually all of the available ITFS and MDS spectrum in the Market and, as the “Joint Motion for Approval of Settlement and Waiver of Cut-Off Rules” explains, resolution of issues with respect to all such spectrum is a fundamental part of the Marketwide Settlement:

At present, though a large number of ITFS stations are operating from various sites in the Market, these stations are not designed, constructed, or operated in a coordinated manner. Some stations are used as repeaters or relay stations. Several stations have been in existence for many years and do not employ the latest and best available technology. No commercial MDS/MMDS stations are operational in the area. As described above, PCTV, the commercial E group conditional licensee, has been unable to construct its E group station because of the District’s grandfathered ITFS station on the same frequency group. Finally the H group channels are not available for commercial use because they are presently utilized by the District.⁹

Thus, the Marketwide Settlement will not only benefit FAU and the School District and the constituencies they serve, but the reorganization and reassignment of channels will allow Sprint/WBSWP to launch a commercial wireless service in the Market. Residents of the Market will also benefit from having another competitive choice for wireless services.

⁸ The Marketwide Settlement seeks to clear spectrum congestion by eliminating multiple stations that are licensed in the Market on the A-group, E-group and G-group. The School District holds one A-group license (KZB28), and FAU holds three A-group licenses (WLX269, WHR877, and WHR894). The School District has a license for the E-group (KHU90) and WBSWP holds a license for the E group (WMI841). Finally, the School District holds three licenses for the G-group (KZB29, WHR973, and WHR994).

⁹ See Exhibit 1, Joint Motion for Approval of Settlement and Request for Waiver of Cut-Off Rules at 3. See also the May 30, 1995 follow-up letter (attached hereto as Exhibit 2), in which counsel for the parties explains how the channels will be reorganized and reassigned pursuant to the Marketwide Settlement, and which licenses will be submitted for cancellation.

The Dismissed Modification Application is Not Mutually Exclusive.

As the Marketwide Settlement states at paragraph 3, “. . . the [School] District agrees to the assignment of its H channel facility (KZB-30) to WBS-WP, and the relocation of the H channel facility to the Collocation Site.”¹⁰ To implement this provision of the Marketwide Settlement, the School District and WBSWP filed an application to assign KZB30 from the School District to WBSWP (the “Assignment Application”).¹¹ The Modification Application was also filed to collocate KZB30 with the other stations in the Market at 505 S. Congress Avenue in Boynton Beach, Florida.

Accordingly, the Modification Application dismissed by the Commission on July 29, 2004, is **not** mutually exclusive with any other previously proposed applications or stations, including the generic “MX with ITFS” as identified on Exhibit E of the Report and Order. To the extent the Commission’s notation “MX with ITFS” refers to some form of mutual exclusivity

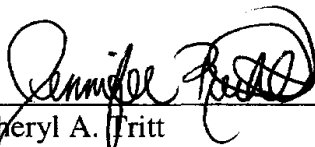
¹⁰ Marketwide Settlement at 4.

¹¹ The Assignment Application was filed on May 24, 1995 (File No. BALIF-9550758). Sprint / WBSWP note that the Assignment Application was dismissed by the Commission on June 20, 2003. FCC Public Notice, *Wireless Telecommunications Bureau Announces Action on Responses to Public Notice Regarding ITFS, MDS and MMDS Pending Applications*, 18 FCC Rcd 12277 (2003), published in the Federal Register at, 68 Fed. Reg. 41,791 (July 15, 2003). The dismissal was due to an inadvertent and unintentional failure to request continued processing of the Assignment Application in response to the Wireless Telecommunications Bureau’s October 18, 2002 *Public Notice* which requested applicants to express continued interest in pending applications or such applications would be dismissed. FCC Public Notice, *Wireless Telecommunications Bureau Seeks to Verify ITFS, MDS and MMDS License Status and Pending Applications*, 17 FCC Rcd 20538 (2002), published in the Federal Register at 67 Fed. Reg. 69010 (Nov. 14, 2002). Sprint / WBSWP did not seek reconsideration of the dismissal of the Assignment Application because, unlike the Modification Application which altered the protected service area of KZB30 and was therefore time sensitive, a new assignment application can be prepared and filed at any time. Accordingly, WBSWP and the School District are preparing and will file a new assignment application to be processed by the Commission in conjunction with grant of all other applications that have been filed and are pending in furtherance of the Marketwide Settlement.

between the Modification Application and the School District's ITFS station, KZB30, there is no issue. Specifically, the station that is being modified pursuant to the Modification Application is KZB30, and therefore cannot be mutually exclusive. The Modification Application was filed with the School District's consent, cooperation and agreement as evidenced by the Marketwide Settlement. The Marketwide Settlement was entered into to *resolve* mutual exclusivity and to relieve the congestion on the ITFS and MDS spectrum in the Market, which has precluded efficient instructional service and the launch of commercial wireless services. The Modification Application and Waiver Request, together with all other applications that were filed to implement the Marketwide Settlement, have been pending with the Commission for more than nine (9) years, and should be processed expeditiously.

In view of the foregoing, Sprint / WBSWP request that the Commission promptly reinstate the dismissed Modification Application, together with the Waiver Request, for processing as part of the Marketwide Settlement.

Respectfully submitted,



Cheryl A. Fritt
Jennifer L. Richter
Morrison & Foerster LLP
2000 Pennsylvania Avenue, N.W.
Washington, D.C. 20006-1888
(202) 887-1500

*Attorneys for Sprint Corporation
WBSWP Licensing Corporation*

Dated: August 30, 2004

CERTIFICATE OF SERVICE

I, Michael Rodgers, do hereby certify that I have on this 30th day of August 2004, had copies of the foregoing **PETITION FOR RECONSIDERATION** delivered to the following via electronic mail or overnight delivery as indicated:

Bryan N. Tramont
Office of Chairman Powell
Federal Communications Commission
445 12th Street, S.W., 8th Floor
Washington, DC 20554
Via Electronic Mail: btramont@fcc.gov

Barry Ohlson
Office of Commissioner Adelstein
Federal Communications Commission
445 12th Street, S.W., 8th Floor
Washington, DC 20554
Via Electronic Mail: bohlon@fcc.gov

Jennifer Manner
Office of Commissioner Abernathy
Federal Communications Commission
445 12th Street, S.W., 8th Floor
Washington, DC 20554
Via Electronic Mail: jmanner@fcc.gov

John Schauble
Public Safety and Private Wireless Div.
Wireless Telecommunications Bureau
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554
Via Electronic Mail: jschaubl@fcc.gov

Charles Oliver
Public Safety and Private Wireless Div.
Wireless Telecommunications Bureau
Federal Communications Commission
445 12th Street, S.W., Room 3-C124
Washington, DC 20554
Via Electronic Mail: coliver@fcc.gov

Paul Margie
Office of Commissioner Copps
Federal Communications Commission
445 12th Street, S.W., 8th Floor
Washington, DC 20554
Via Electronic Mail: pmargie@fcc.gov

Sam Feder
Office of Commissioner Martin
Federal Communications Commission
445 12th Street, S.W., 8th Floor
Washington, DC 20554
Via Electronic Mail: sfeder@fcc.gov

D'Wana Terry
Public Safety and Private Wireless Div.
Wireless Telecommunications Bureau
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554
Via Electronic Mail: dterry@fcc.gov

Nancy Zaczek
Public Safety and Private Wireless Div.
Wireless Telecommunications Bureau
Federal Communications Commission
445 12th Street, S.W., Room 3-C124
Washington, DC 20554
Via Electronic Mail: nzaczek@fcc.gov

Stephen Zak
Public Safety and Private Wireless Div.
Wireless Telecommunications Bureau
Federal Communications Commission
445 12th Street, S.W., Room 3-C124
Washington, DC 20554
Via Electronic Mail: szak@fcc.gov

Gary Michaels
Auctions and Industry Analysis Div.
Wireless Telecommunications Bureau
Federal Communications Commission
445 12th Street, S.W., Room 4-A760
Washington, DC 20554
Via Electronic Mail: gmichael@fcc.gov

Catherine Seidel
Office of the Bureau Chief
Wireless Telecommunications Bureau
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554
Via Electronic Mail: cseidel@fcc.gov

Andrea Kelly
Auctions and Industry Analysis Div.
Wireless Telecommunications Bureau
Federal Communications Commission
445 12th Street, S.W., Room 4-A760
Washington, DC 20554
Via Electronic Mail: akelly@fcc.gov

Qualex International
Portals II
445 12th Street, SW
Courtyard Level
Washington, DC 20554
Via Electronic Mail: qualexint@aol.com

Robert B. Midgett
School Board of Palm Beach County
505 S. Congress Avenue
West Palm Beach, FL 33427
By Overnight Delivery

Evan Carb
RJG Law LLC
8401 Ramsey Avenue
Silver Spring, MD 20910
By Overnight Delivery


Michael Rodgers

EXHIBIT 1

**Marketwide Settlement Agreement
and Joint Motion for Approval
Filed with the FCC on May 24, 1995**

VINCENT A. PEPPER
ROBERT F. CORAZZINI
PETER GUTHMANN
JOHN F. GARZIGLIA
NEAL J. FRIEDMAN
ELLEN S. MANDELL
HOWARD J. BARR
LOUISE CYBULSKI *
L. CHARLES KELLER *
MICHAEL J. LEHNHUEHL *
SUZANNE C. SPINA *
* NOT ADMITTED IN D.C.

PEPPER & CORAZZINI
L. L. P.

ATTORNEYS AT LAW
200 MONTGOMERY BUILDING
1776 K STREET, NORTHWEST
WASHINGTON, D. C. 20006
(202) 296-0600

2379F - Aides
FILE COPY
GREGG P. SKALL
E. THEODORE MALLYCK
OF COUNSEL
W. P. Kelly
appd

RECE
INT
MAY. 24

FEDERAL COMMUNICATIONS
OFFICE OF THE SECRETARY

May 24, 1995

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, DC 20554

Re: ITFS Joint Motion for Approval of Settlement
West Palm Beach, Florida

Dear Mr. Caton:

There is transmitted herewith an original and four (4) copies of a Joint Motion for Approval of Settlement and Request for Waiver of Cut-off Rules. The settlement resolves mutually-exclusive proposals for the D group channels in West Palm Beach, Florida, by proposing a market-wide channel reallocation and collocation plan.

Should there be any question with respect to this filing, please communicate directly with the undersigned.

Sincerely yours,

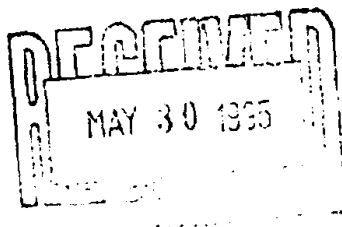


L. Charles Keller
Counsel to Wireless Broadcasting
Systems of America, Inc.

Enclosures

cc: Jennifer L. Richter, Esq.
William D. Wallace, Esq.
Mr. W. Douglas Trabert
Mr. Michael J. Specchio

lck/lc
c:\wp\2379f\lx-joint.mot



**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In re Applications of)	
)	
)	
The School District of Palm)	Petition for Displacement of KHU-90; KZB-28
Beach County, Florida)	KZB-29; WHR-973; WHR-994; KZB-30
)	
People's Choice TV, Inc.)	WMI841
)	
The Board of Regents, A Public)	BPLIF-920814DB; WLX-269; WHR-877;
Corporation of the State of Florida)	WHR-894; WHR-895; WHR-896;
on behalf of Florida Atlantic University)	WHR-897; WHR-901
)	
Wireless Broadcasting Systems of)	
West Palm Beach, Inc.)	
)	
For Construction Permit and License,)	
Modification, and/or Assignment of)	
Facilities in the Instructional)	
Television Fixed and Multichannel)	
Multipoint Distribution Services in the)	
West Palm Beach, Florida, Area)	

To: Chief, Video Services Division

**JOINT MOTION FOR APPROVAL OF SETTLEMENT
AND
REQUEST FOR WAIVER OF CUT-OFF RULES**

The School District of Palm Beach County, Florida (the "District"), People's Choice TV, Inc. ("PCTV"), Wireless Broadcasting Systems of West Palm Beach, Inc. ("WBS-WP) and the Board of Regents, a Public Corporation of the State of Florida, on behalf of Florida Atlantic University (the "University"), by counsel, hereby submit their Joint Motion for Approval of Settlement and Request for Waiver. In support thereof, the parties respectfully show as follows:

I. Approval of Settlement

These proceedings involve PCTV's, WBS-WP's and the University's mutually exclusive applications concerning stations in the Instructional Television Fixed Service ("ITFS") on the D group channels in the West Palm Beach, Florida, market (the "Market"). Also involved are the parties' proposals to modify existing and proposed ITFS facilities in the Market and to submit others for cancellation in order to allow for better and more spectrum-efficient service to the parties' receive sites.

PCTV's and WBS-WP's proposal to migrate the District's D group station is contained in the Petition for Displacement and application (the "Displacement Application") filed on December 29, 1993.¹ The University's D group proposal is contained in the application in file no. BPLIF-920814DB. PCTV is the conditional licensee of MMDS E group station WMI841. This station cannot be constructed or operated because of the District's grandfathered E group ITFS facility, station KHU-90. WBS-WP is a wireless cable operator currently developing a wireless cable system in the Market which will include PCTV's E group station. Accordingly, PCTV and WBS-WP filed the Displacement Application on December 29, 1993. WBS-WP entered into excess capacity lease agreements with the University in July 1994 and the District in January 1995.

To provide for the private resolution of the mutually exclusive D group proposals, to achieve better and more spectrum-efficient service to the educational licensees' receive sites, and to allow for the commercial use of the E group channels and the development of a wireless cable system in the Area, the parties have entered into a Market Settlement Agreement ("Agreement"),

¹ With respect to the Displacement Application, WBS-WP is the successor to WJB-TV Ft. Pierce Limited Partnership, whose name appeared in the Displacement Application.

which is attached hereto as Exhibit 1. The parties respectfully request the Commission's approval of the Agreement.

At present, though a large number of ITFS stations are operating from various sites in the Market, these stations are not designed, constructed, or operated in a coordinated manner. Some stations are used as repeaters or relay stations. Several stations have been in existence for many years and do not employ the latest and best available technology. No commercial MDS/MMDS stations are operational in the area. As described above, PCTV, the commercial E group conditional licensee, has been unable to construct its E group station because of the District's grandfathered ITFS station on the same frequency group. Finally, the H group channels are not available for commercial use because they are presently utilized by the District.

The parties to the Agreement constitute the licensees or applicants for all of the ITFS and MDS/MMDS channels (except MDS channels 1 and 2A) in the Market. The arrangements outlined herein have been the subject of negotiations between various of these parties for over two years. Through this settlement the parties expect to accomplish the following:

1. to resolve the mutual exclusivity between the D group ITFS applications;
2. to ensure that each of the stations is able to reach all desired educational receive sites in Palm Beach County, thus eliminating the present use of duplicate stations, point-to-point stations, and repeater stations;
3. to ensure the most economical and efficient usage of the spectrum and eliminate disputes between the parties as to that usage;
4. to coordinate the operation and maintenance of these stations, thus taking advantage of possible economies of scale and efficiencies;
5. to collocate all of the ITFS and MDS/MMDS stations in the market at a single transmitter site, thus reducing the possibility of interference between these stations;
6. to develop modern, efficient ITFS systems for both the University and the

District;

7. to allow for the development of a wireless cable television system to serve the public and provide competition in the multichannel video delivery marketplace in the Market;
8. to generate royalties for the benefit of the University and the District to provide a source of funding for their instructional television ventures; and
9. to allow for the carriage by the wireless cable television system of at least some of the District's and the University's programming, so as to enable the public to receive in-home instructional programming, possibly for credit.

A summary of the necessary filings is attached hereto as Exhibit 2.

WBS-WP and PCTV have committed to comply with the requirements of the Commission's Rules and policies for involuntary ITFS migration, as they relate to the posting of a bond and other matters, in the event the Displacement Application is granted.

As attested in the attached declarations, no monetary consideration was exchanged among the parties in consideration for the settlement, and no applications were filed in order to procure the settlement. Because the public interest, convenience and necessity would best be served thereby, the parties respectfully request the Commission to approve the attached Market Settlement Agreement.

II. Request for Waiver of Cut-off Rules

The District and the University also respectfully request waiver of the Commission's cut-off rules in the processing of the major modification applications, and major amendments to pending applications, filed to accommodate the settlement. Waiver of the cut-off rules for major change applications may be granted to accommodate settlement agreements between mutually-exclusive applicants. Memorandum Opinion and Order in MM Docket No. 83-523 (Instructional Television Fixed Service Reconsideration), 59 RR 2d 1355, 1381 n.47 (1986).

Although mutually exclusive applications exist only for the D group, the parties request waiver of the cut-off rules as to all applications described in the Agreement. A summary of these applications is attached hereto as Exhibit 2. Such a waiver is justified for four reasons.

First, the broader channel rearrangement and collocation plan contemplated by the Agreement was necessary to resolve the competing D group proposals. Without the channel reorganization plan, which is only possible through collocation, the D group settlement will collapse. Thus, all of the modifications listed in Exhibit 2 are necessary to the resolution of the mutual exclusivity and therefore fall within the ambit of footnote 47.

Second, the public interest will best be served by waiving the cut-off rules as to all applications contemplated in the settlement, because the settlement provides for optimal use of the microwave spectrum in the Market. In addition to eliminating duplicative and inefficient use of ITFS frequencies, the applications contemplated in the settlement will allow for use of the E and H channels for the commercial use to which they are primarily allocated.

Third, granting waiver of the cut-off rules to all of the applications will not extend waiver beyond the parties whose mutually exclusive proposals are resolved in the settlement.

Fourth, the channel reorganization plan will allow WBS-WP to provide competitive, wireless cable operations to the Market. There is no such competition now. Rapid implementation of wireless cable service will serve the Commission's goals for commercial use of the MMDS/ITFS spectrum.

WHEREFORE, the parties respectfully request that the Commission approve the attached Market Settlement Agreement, exempt the applications it describes from the cut-off rules, and expeditiously process the applications filed in furtherance hereof.

Respectfully submitted,

SCHOOL DISTRICT OF PALM BEACH
COUNTY, FLORIDA

By William D. Wallace
William D. Wallace
Its Attorney

CROWELL & MORING
1001 Pennsylvania Avenue, NW
Washington, D.C. 20004
(202) 624-2807

Respectfully submitted,

The Board of Regents, a Public Corporation
of the State of Florida, on behalf of
FLORIDA ATLANTIC UNIVERSITY

By _____
Gregg Gleason
General Counsel

BOARD OF REGENTS' OFFICE
325 West Gaines St., Suite 1522
Tallahassee, Florida 32399
(904) 488-5441

PEOPLE'S CHOICE TV, INC. and
WIRELESS BROADCASTING SYSTEMS
OF WEST PALM BEACH, INC.

By _____
L. Charles Keller
Their Attorney

PEPPER & CORAZZINI, L.L.P.
1776 K Street, N.W., Suite 200
Washington, D.C. 20006
(202) 296-0600

LCK/lid
c:\wp\2379F\jntmtn.

WHEREFORE, the parties respectfully request that the Commission approve the attached Market Settlement Agreement, exempt the applications it describes from the cut-off rules, and expeditiously process the applications filed in furtherance hereof.

Respectfully submitted,

SCHOOL DISTRICT OF PALM BEACH
COUNTY, FLORIDA

By _____
William D. Wallace
Its Attorney

CROWELL & MORING
1001 Pennsylvania Avenue, NW
Washington, D.C. 20004
(202) 624-2807

Respectfully submitted,

The Board of Regents, a Public Corporation
of the State of Florida, on behalf of
FLORIDA ATLANTIC UNIVERSITY

By Gregg A. Gleason
Gregg Gleason
General Counsel

BOARD OF REGENTS' OFFICE
325 West Gaines St., Suite 1522
Tallahassee, Florida 32399
(904) 488-5441

PEOPLE'S CHOICE TV, INC. and
WIRELESS BROADCASTING SYSTEMS
OF WEST PALM BEACH, INC.

By L. Charles Keller
L. Charles Keller
Their Attorney

PEPPER & CORAZZINI, L.L.P.
1776 K Street, N.W., Suite 200
Washington, D.C. 20006
(202) 296-0600

May 24, 1995

LCK/id
c:\wp\2379F\jntmtn.

MARKET SETTLEMENT AGREEMENT

THIS MARKET SETTLEMENT AGREEMENT ("Agreement") is entered into by and among the School District of Palm Beach County, Florida (the "District"); The Board of Regents, a Public Corporation of the State of Florida, on behalf of Florida Atlantic University (the "University"); Wireless Broadcasting Systems of West Palm Beach, Inc. ("WBS-WP"); and People's Choice TV, Inc. ("PCTV").

WHEREAS, the District is the licensee of Instructional Television Fixed Service ("ITFS") stations KZB-28 on the A group at Belle Glade, Florida; KZB-29 on the G group at Riviera Beach, Florida; WHR-973 on channel G3 at West Palm Beach, Florida; WHR-994 on channels G2-G3 at West Palm Beach, Florida; KZB-30 on channels H1-H3 at Loxahatchee, Florida; and KHU-90 on the E group at Boynton Beach, Florida, which is the subject of a Petition for Displacement to the D group channels.

WHEREAS, the University is the licensee of ITFS stations WLX-269 on the A group at Palm Beach, Florida; WHR-877 on the A group at Boca Raton, Florida; WHR-894 on the A group at Boca Raton, Florida; WHR-895 on the A group at Boca Raton, Florida, WHR-896 on the B group at Boynton Beach, Florida; WHR-897 on the C group at Ft. Lauderdale, Florida; WHR-901 on the C group at Palm Beach, Florida; and is the applicant in File No. BPLIF-920814DB for the D group channels at Palm Beach Florida;

WHEREAS, the District and the University currently use some of their ITFS channels either as repeaters or as relays;

WHEREAS, PCTV is the conditional licensee of Multichannel Multipoint Distribution Service ("MMDS") station WMI841 on the E group channels at West Palm Beach, Florida;

WHEREAS, WBS-WP is a wireless cable operator and the lessee of the District's and the University's excess capacity, which WBS-WP will use in a wireless cable television system it is developing to serve the West Palm Beach metropolitan area. WBS-WP has affiliates presently operating similar systems in Melbourne and Fort Pierce, Florida; Sacramento, California; Boise, Idaho; and acquiring a system in Yakima, Washington;

WHEREAS, PCTV cannot construct or commence operating its E group station WMI841 until the District ceases operation of its E group station KHU-90;

WHEREAS, on December 29, 1993, PCTV and WBS-WP filed a Petition for Displacement and Application (the "Displacement Application") to modify KHU-90 to specify operation on the D group channels;

WHEREAS, the Displacement Application is mutually exclusive with the University's D group application (File No. BPLIF-920814DB), making grant of both applications impossible;

WHEREAS, the parties wish to reach a mutually agreeable settlement of their differences;

WHEREAS, the parties recognize that the microwave spectrum in the West Palm Beach metropolitan area could be used more efficiently by centralizing the origination point for all channels and eliminating use of ITFS frequencies as repeaters and/or

relay stations, and allowing commercial use of the E group channels and the H channels;

WHEREAS, the District and the University each recognizes that its ITFS purposes can more efficiently be served by a collocated operation of ten channels each at fifty watts, located on the District's Boynton Beach transmit tower (the "Collocation Site");

NOW, THEREFORE, in consideration of the mutual promises and conditions contained herein, the parties hereto, intending to be legally bound, hereby agree as follows:

1. To accommodate the settlement, PCTV, WBS-WP, the University and the District agree to resolve the mutually exclusive proposals for the D group ITFS channels by dividing the four channels between the University and the District. Accordingly, the University agrees to modify its application in File No. BPLIF-920814DB to specify operation on channels D3-D4 only, and the WBS-WP and PCTV agree to the modification of the Displacement Application to specify operation of KHU-90 on channels D1-D2 only. Furthermore, the District agrees not to object to displacement of station KHU-90 to channels D1-D2, and agrees to relocate the D1-D2 facilities to the Collocation Site.

2. To accommodate the settlement, the University will submit to the FCC for cancellation its authorizations for stations WLX-269, WHR-877, and WHR-894. The University will retain its B group and C group licenses for WHR-896 and WHR-901, respectively, and these facilities will be moved to the Collocation

Site so that more spectrum-efficient service to all of its receive sites is possible. The University will also retain its authorizations for stations WHR-895 and WHR-897, which stations will be used in the Ft. Lauderdale area, configured so as not to cause harmful interference to stations operating from the Collocation Site.

3. To further accommodate the settlement, the District will modify its G group authorization for KZB-29 and its A-group authorization for KZB-28 to collocate these facilities with WBS-WP's system. The District will submit to the FCC for cancellation its licenses for WHR-973 and WHR-994. Further, the District agrees to the assignment of its H channel facility (KZB-30) to WBS-WP, and the relocation of the H channel facility to the Collocation Site.

4. To further accommodate the settlement and eliminate potential interference, PCTV agrees to the relocation of its E group facility WMI841 to the Collocation Site.

5. The parties agree to cooperate with one another with respect to the filing of the applications and other papers required by this Agreement and agree not to interpose any objection to any filing which is consistent with this Agreement.

6. The parties agree to file the FCC applications required to effectuate this Agreement on or about the same day and to seek concurrent processing for all such applications. The parties agree that the modifications contemplated by the settlement will be installed concurrently so as to complete installation and

testing efficiently. The parties agree to coordinate the cut-over date with the University's and the District's educational schedules.

7. Whenever the context of this Agreement so requires, words used in the singular shall be construed to mean or include the plural and vice versa, and pronouns of any gender shall be construed to mean or include any other gender or genders.

8. This Agreement may not be modified or amended, except by a written instrument signed by each of the parties designating specifically the terms and provisions so modified and amended.

9. Each signatory to this Agreement represents that he or she has full legal authority to enter into, execute and perform the obligations of this Agreement. This Agreement shall be binding upon and inure to the benefit of the parties, their heirs, successors and assigns.

10. This Agreement may be signed in one or more counterparts, each of which shall be an original, but all of which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have executed this
Market Settlement Agreement as of the dates written below.

THE BOARD OF REGENTS, a Public Corpora-
tion of the State of Florida, on behalf
of Florida Atlantic University

Date: 5/12/95

By Charles B. Reed
Charles B. Reed, Chancellor

THE SCHOOL DISTRICT OF PALM BEACH
COUNTY, FLORIDA

Date: _____

By _____
Jody Gleason, Chairman

Date: _____

By _____
C. Monica Uhlhorn, Superintendent

WIRELESS BROADCASTING SYSTEMS OF WEST
PALM BEACH, INC.

Date: _____

By _____
William Kingery, President

PEOPLE'S CHOICE TV, INC.

Date: _____

By _____
Michael J. Specchio, President

LCK/ld
c:\wp\2379F\contract.

IN WITNESS WHEREOF, the parties hereto have executed this
Market Settlement Agreement as of the dates written below.

THE BOARD OF REGENTS, a Public Corpora-
tion of the State of Florida, on behalf
of Florida Atlantic University

Date: _____

By _____
Charles B. Reed, Chancellor

THE SCHOOL DISTRICT OF PALM BEACH
COUNTY, FLORIDA

Date: April 26, 1995

By Jody Gleason
Jody Gleason, Chairman

Date: April 27, 1995

By C. Monica Uhlhorn
C. Monica Uhlhorn, Superintendent

WIRELESS BROADCASTING SYSTEMS OF WEST
PALM BEACH, INC.

Date: _____

By _____
William Kingery, President

PEOPLE'S CHOICE TV, INC.

Date: _____

By _____
Michael J. Specchio, President

LCK/ld
c:\wp\2379F\contract.

IN WITNESS WHEREOF, the parties hereto have executed this
Market Settlement Agreement as of the dates written below.

THE BOARD OF REGENTS, a Public Corpora-
tion of the State of Florida, on behalf
of Florida Atlantic University

Date: _____

By _____
Charles B. Reed, Chancellor

THE SCHOOL DISTRICT OF PALM BEACH
COUNTY, FLORIDA

Date: _____

By _____
Jody Gleason, Chairman

Date: _____

By _____
C. Monica Uhlhorn, Superintendent

WIRELESS BROADCASTING SYSTEMS OF WEST
PALM BEACH, INC.

Date: 4/20/95

By Jennifer Richter
Jennifer L. Richter, Vice-President
PEOPLE'S CHOICE TV, INC.

Date: _____

By _____
Michael J. Specchio, President

LCK/ld
c:\wp\2379F\contract.

IN WITNESS WHEREOF, the parties hereto have executed this
Market Settlement Agreement as of the dates written below.

THE BOARD OF REGENTS, a Public Corpora-
tion of the State of Florida, on behalf
of Florida Atlantic University

Date: _____

By _____
Charles B. Reed, Chancellor

THE SCHOOL DISTRICT OF PALM BEACH
COUNTY, FLORIDA

Date: _____

By _____
Jody Gleason, Chairman

Date: _____

By _____
C. Monica Uhlhorn, Superintendent

WIRELESS BROADCASTING SYSTEMS OF WEST
PALM BEACH, INC.

Date: _____

By _____
William Kingery, President

PEOPLE'S CHOICE TV, INC.

Date: 5/22/95

By  _____
Michael J. Specchio, President

LCK/id
c:\wp\2379F\contract.

Declaration of Michael J. Specchio

I, Michael J. Specchio, declare follows:

1. I am President of People's Choice TV, Inc., which is a party to the foregoing Market Settlement Agreement related to the West Palm Beach, Florida, area;

2. I certify that no monetary consideration was exchanged among the parties in consideration for the settlement; and

3. I certify that People's Choice TV, Inc. did not file any of the affected applications in order to procure the Settlement.

I declare that the foregoing is true and correct under penalty of perjury under the laws of the United States.



Michael J. Specchio, President

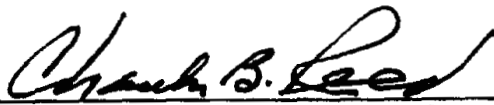
Date: 5/22/95

Declaration of Charles B. Reed

I, Charles B. Reed, declare follows:

1. I am Chancellor of The Board of Regents, a Public Corporation of the State of Florida, on behalf of Florida Atlantic University, which is a party to the foregoing Market Settlement Agreement related to the West Palm Beach, Florida, area;
2. I certify that no monetary consideration was exchanged among the parties in consideration for the settlement; and
3. I certify that The Board of Regents, a Public Corporation of the State of Florida, on behalf of Florida Atlantic University did not file any of the affected applications in order to procure the Settlement.

I declare that the foregoing is true and correct under penalty of perjury under the laws of the United States.



Charles B. Reed, Chancellor

Date: 5/12/95

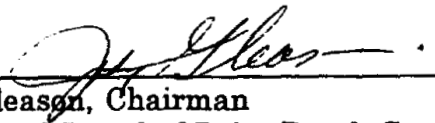
Declaration of Jody Gleason

I, Jody Gleason, declare as follows:

1. I am Chairman of The School Board of the School District of Palm Beach County, which is a party to the foregoing Market Settlement Agreement related to the West Palm Beach, Florida, area;
2. I certify that neither the School District nor any of its principals has received monetary consideration for the settlement; and
3. I certify that The School District of Palm Beach County did not file any application in order to procure the settlement.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on this 26th day of April, 1995.



Jody Gleason, Chairman
The School Board of Palm Beach County,
Florida

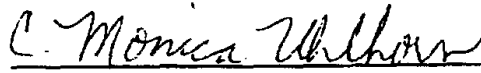
Declaration of C. Monica Uhlhorn

I, C. Monica Uhlhorn, declare as follows:

1. I am Superintendent of The School District of Palm Beach County, which is a party to the foregoing Market Settlement Agreement related to the West Palm Beach, Florida, area;
2. I certify that neither the School District nor any of its principals has received monetary consideration for the settlement; and
3. I certify that The School District of Palm Beach County did not file any application in order to procure the settlement.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on this 27th day of April, 1995.



C. Monica Uhlhorn, Superintendent
The School District of Palm Beach County,
Florida

EXHIBIT 2

**Letter from Counsel to the FCC
May 30, 1995
Summary of Marketwide Settlement**

VINCENT A. PEPPER
ROBERT F. CORAZZINI
PETER GUTMANN
JOHN F. GARZIGLIA
NEAL J. FRIEDMAN
ELLEN S. MANDELL
HOWARD J. BARR
LOUISE CYBULSKI *
L. CHARLES KELLER *
MICHAEL J. LIEHMUHL *
SUZANNE C. SPINK *

* NOT ADMITTED IN D.C.

**PEPPER & CORAZZINI
L.L.P.**

ATTORNEYS AT LAW
200 MONTGOMERY BUILDING
1776 K STREET, NORTHWEST
WASHINGTON, D. C. 20006
(202) 296-0600

GREGG P. SKALL
E. THEODORE MALLYCK
OF COUNSEL
FREDERICK W. FORD
1909-1986

TELECOPIER (202) 296-5572
INTERNET PEPCOR@COMMLAW.COM

May 30, 1995

Hand Delivery

Mr. Melvin Collins
Federal Communications Commission
1919 M Street, N.W., Room 700
Washington, D.C. 20554

Re: West Palm Beach ITFS Settlement

Dear Melvin:

On Thursday, May 25, we met with Barbara Kreisman and Clay Pendarvis to present the West Palm Beach ITFS settlement. Clay indicated that you would be the engineer handling the matter. Enclosed is a summary of the settlement. The necessary ITFS applications were filed on May 24, and I believe Clay has already provided you with copies of them.

In our meeting, Clay agreed in principle that all of these applications should be exempt from the cut-off rules because all are necessary to the settlement. Although the MX applications exist only for the D group, the channel reorganization and collocation plan in its entirety is essential to the settlement; without it, the D group settlement will fail. Further, all the affected stations are licensed to the same two parties whose mutually-exclusive D group applications are resolved by the settlement. Therefore, all the applications fall within the scope of footnote 47 and are cut-off exempt.

As to timing issues, Clay believed it would be possible to put out a 30-day public notice of the settlement (for petitions only) early this week. Clay also stated that the applications would probably be granted shortly after the end of the 30-day period. The parties hope to have the reconfigured system built in advance of October 9, 1995, which is the current construction deadline for the E group MMDS facility (now blocked by a grandfathered ITFS facility). To do so, grants would be necessary by September 1, 1995. This will allow us to avoid burdening the Commission with additional paperwork in the form of an application for further extension of the E group construction deadline.

Mr. Melvin Collins
May 30, 1995
Page 2

If there is any additional information you need regarding these matters, please do not hesitate to contact the parties' representatives, who are identified at the bottom of the attached sheet.

Best regards.

Sincerely yours,

A handwritten signature in cursive script, appearing to read "Chuck Keller", followed by a horizontal line.

L. Charles Keller
Counsel to Wireless Broadcasting
Systems of America, Inc., and
People's Choice TV, Inc.

Enclosures

cc: Clay C. Pendarvis, Esq. (by hand)
William D. Wallace, Esq.
Mr. W. Douglas Trabert
✓ Jennifer L. Richter, Esq.
Mr. Michael Specchio

May 25, 1995

ITFS SETTLEMENT - WEST PALM BEACH, FL

- I. The parties.
 - A. Two ITFS entities have licenses or pending applications for all ITFS channels plus the E and H channels.
 - 1. School Board of Palm Beach County (the "District").
 - 2. Florida Atlantic University ("FAU").
 - B. People's Choice TV, Inc. ("PCTV"), conditional licensee of unconstructed E group MMDS facility.
 - C. Wireless Broadcasting Systems of America, Inc. ("WBSA"), an established wireless cable television operator with operating systems in several markets around the country, is developing the West Palm Beach market.
- II. Current situation in West Palm Beach area.
 - A. Multiple ITFS stations on all channel groups, operating from different locations. Some stations used as repeaters or relays.
 - B. E and H channels occupied by grandfathered ITFS facilities, preventing their use for commercial service. As a result, no MDS/MMDS facilities are operating in the area.
 - C. FAU application for D group channels mutually exclusive with PCTV/WBSA's proposal to displace the District's E group facility to the D group.
- III. Proposed settlement.
 - A. Resolves mutually exclusive applications for D group channels through a market-wide channel reallocation and collocation plan.
 - B. Provides for the migration of grandfathered E group ITFS facility to channels D1-D2 so that PCTV's E group MMDS station can be constructed and placed into operation.
 - C. Eliminates grandfathered H channel ITFS facility by providing for assignment of the channels to WBSA. H channels will then be used for MDS service.
 - D. Allows for the operation of a wireless cable television system serving the West Palm Beach area, to provide competition to franchised cable systems and video programming to homes not passed by cable.
- IV. Timing issues. To minimize educational disruption, the parties plan to make the transition to the collocated system during the ITFS parties' winter breaks, which coincide beginning December 18, 1995. To allow time for construction, action on the applications is requested by November 1, 1995.

School Board
William D. Wallace, Esq.
Crowell & Moring
(202) 624-2807

Florida Atlantic Univ.
W. Douglas Trabert
Learning Resources Director
(407) 367-3690

Wireless Broadcasting Systems
L. Charles Keller, Esq.
Pepper & Corazzini, LLP
(202) 296-0600

West Palm Beach Settlement

Applications Necessary to the Settlement

The settlement resolves mutually-exclusive proposals for the D group channels. However, because the ITFS parties' agreement to resolve the MX situation depends upon the market-wide channel reallocation and collocation plan, all of the applications described below are necessary to the settlement and should be exempted from the ITFS cut-off rules pursuant to footnote 47:

Channel Group	Licensee	Call Sign	Nature of Application
A	School Board of Palm Beach County ("District")	KZB-28	Collocate and Increase Power to 50 watts
B	Florida Atlantic University ("University")	WHR-896	Collocate and Increase Power to 50 watts
C	University	WHR-901	Collocate and Increase Power to 50 watts
D	University	BPLIF-920814DB	Reduce channels to D3-D4 only
	District	KHU-90 Displacement Application	Reduce channels to D1-D2 only <u>Both:</u> Collocate and increase power to 50 watts
E	District	KHU-90	Migrate to D1-D2
	People's Choice TV, Inc.	WMI841	Collocate and Increase Power to 50 watts (MDS)
G	District	KZB-29	Collocate and Increase Power to 50 watts
H	District	KZB-30	Assign to WBS-WP (MDS); Collocate and Increase Power to 50 Watts

Other Licenses Included in the Agreement

Florida Atlantic University

WLX-269	A1-A4 Palm Beach, Florida	Cancel
WHR-877	A1-A4 Boca Raton, Florida	Cancel
WHR-894	A1-A4 Boca Raton, Florida	Cancel

School Board of Palm Beach County

WHR-973	G3 West Palm Beach, Florida	Cancel
WHR-994	G2-G3 West Palm Beach, Florida	Cancel